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Committee on Economic, Social and Cultural Rights

Fifty-seventh session

Summary record of the first part (public)* of the 10th meeting
Held at the Palais des Nations, Geneva, on Friday, 26 February 2016, at 3 p.m.

Chair: Mr. Sadi

Contents

Miscellaneous matters

Informal meeting with States

* No summary record was prepared for the second part (closed) of the meeting.

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The meeting was called to order at 3 p.m.

Miscellaneous matters

Informal meeting with States

1. **The Chair** said that he was pleased to welcome the representatives of States to the informal meeting, which was designed to serve as a forum where participants could engage in a free and frank dialogue on the items that he wished to propose for discussion, namely General Assembly resolution 68/268 and the use of additional meeting time, reporting by States parties and the simplified reporting procedure, the Optional Protocol to the Covenant and the working group on communications, and general comments and other substantive work.

2. The General Assembly, in its resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system, encouraged the human rights treaty bodies to offer to States parties for their consideration simplified reporting procedures. It also strongly condemned acts of intimidation and reprisals against individuals and groups for their contributions to the work of the human rights treaty bodies, and it was in that connection that, in 2015 at their twenty-seventh annual meeting, the chairs of the human rights treaty bodies had endorsed a set of guidelines against intimidation or reprisals, known as the San José Guidelines; it was for the individual treaty bodies to decide whether to act on the specific recommendations made at the meeting, since the chairs were not mandated to make commitments on their behalf. In addition, the resolution provided for additional meeting time, partly to help deal with the backlog of reports. However, in his view the current allowance of six hours of meeting time for the consideration of periodic reports was insufficient and adversely affected the quality of the process.

3. **Ms. Bras Gomes**, referring to working methods, said that the Committee had begun, on a pilot basis, to prepare lists of issues prior to reporting. The possibility of reporting under the simplified procedure had been offered to States parties that were in at least the fourth reporting round and were scheduled to report in 2017. To date, three States had accepted the offer: Bulgaria, New Zealand and Spain. The Committee hoped that the new procedure would lead to a more focused dialogue with States that had been reporting regularly and would enable both the Committee and States to concentrate on key issues related to the implementation of a certain number of rights. The procedure would be evaluated after the pilot phase. The views of States would be most welcome throughout the process.

4. Regarding overdue reports, a number of States had taken advantage of the capacity-building programme established pursuant to resolution 68/268 in order to support States parties in fulfilling their treaty obligations. Government officials in those States had received training to enable them to join a network of State officials within their subregion. The Committee looked forward to the 29 States parties with overdue initial reports engaging with the capacity-building programme and complying with their reporting obligations.

5. **Ms. Zolotova** (Russian Federation) said that she would like to thank the Committee for convening the meeting and providing member States with the opportunity for discussion. Regarding the pilot project for the simplified reporting procedure, she asked whether the Committee could explain how the list of issues prior to reporting would be structured. In particular, she would like to know whether States would have the opportunity to inform the Committee about developments that they considered to be relevant and important and whether there would be any limit on the number of questions asked.

6. **Mr. Gamaleldin** (Egypt) said that feedback about the simplified reporting procedure received by his Government from other States had been quite mixed: some States had found it a very positive experience, while others had stated that it was not the fairest way of facilitating a dialogue with a treaty body. His Government preferred therefore to reserve its position in that regard until more extensive feedback had been collected. He would be interested to know whether the Committee had in mind a time frame for eliminating the backlog of reports. As to the San José Guidelines, his delegation, like others, had had occasion to express a number of concerns regarding, among other issues, the nature of the drafting process and the possible creation of further obligations on States. He would therefore like to know what action the Committee was planning to take regarding the Guidelines, following their endorsement by the meeting of the chairs. Lastly, he asked whether the Committee was planning to update or revise general comment No. 18 on article 6 of the Covenant.

7. **Ms. Zhong** Jing (China) said that China had always attached great importance to economic, social and cultural rights and that her Government appreciated the work done by the Committee to promote the implementation of the Covenant. In the light of comments that it had heard, her Government was of the view that the simplified reporting procedure needed to be introduced in a balanced manner that would make it possible to gain a comprehensive picture of how States parties implemented the various treaties. She hoped that States would be consulted and listened to during the preparation of lists of issues. As for the San José Guidelines, her Government shared the concerns expressed by the representative of Egypt and others regarding, in particular, the lack of transparency in their drafting and the fact that their endorsement went beyond the mandate of the meeting of the chairs. It was to be hoped that any further action by treaty bodies regarding the Guidelines would be taken in a transparent manner and in consultation with States parties. She asked what steps the Committee was planning to take in that connection.

8. **Mr. Toro Carreño** (Bolivarian Republic of Venezuela) said that his Government would like to join with the representatives of Egypt and China, who had expressed concerns about the San José Guidelines, regarding in particular the lack of a mandate on the part of the chairs and the absence of prior consultation with States parties. His delegation was also concerned about the limited time available to States during the interactive dialogue to respond appropriately to the complex questions posed and about the disrespectful and somewhat hostile language used on occasion by some experts toward the high-level delegations that represented his Government during such dialogues. Lastly, he wished to express his Government's support for the work of the treaty bodies and to reaffirm its commitment to cooperating with them.

9. **Mr. Lopes Cabral** (Portugal) said that he would like to know more about how the Committee intended to evaluate the pilot project for the simplified reporting procedure, and in particular what role States would play in that process.

10. **Ms. Ershadi** (Islamic Republic of Iran) said that her Government was of the view that, compared to other sets of rights, economic, social and cultural rights suffered from lack of recognition and that more needed to be done by the Committee and the international community to promote their implementation. As to resolution 68/268, it should not produce any new obligations for States parties. Regarding the so-called San José Guidelines, her delegation believed that guidelines of such importance and sensitivity should be drafted in a transparent and inclusive manner with the full and effective engagement of the States parties concerned. Her Government's experience of the simplified reporting procedure had been that the time allowed to the delegation to respond to the many questions raised had been insufficient for it to provide the necessary information. She hoped that the Committee would pay due

attention to preparing lists of issues prior to reporting in a clear and transparent manner.

11. **Mr. Clyne** (New Zealand) said that his Government had found the submission of reports under the simplified reporting procedures to be a generally positive experience thus far. He asked when the Committee planned to publish the general comment on sexual and reproductive health and rights that it was currently drafting.

12. **The Chair** said that he wished to allay the concerns that had been expressed about the San José Guidelines. The chairs were fully aware that they had no mandate to speak on behalf of all the treaty bodies; it was for each and every treaty body to decide how to act on their recommendations. While some other committees had already adopted the Guidelines, the Committee on Economic, Social and Cultural Rights had not yet taken a decision. As to the lack of time for delegations to respond to the questions put to them by experts during consideration of periodic reports, it was for States Members to make clear to the General Assembly that more time was required.

13. **Ms. Bras Gomes** said that the structure of the simplified reporting procedure used by the Committee allowed it to focus first on either recurrent issues or issues that that had emerged since the previous reporting period, and second on the ongoing implementation of the Covenant. In all their replies, States could provide any information that they considered relevant; they would also be asked to identify good practices in their policies that related to the implementation of the Covenant. The number of questions was limited to 30. The Committee would evaluate the pilot at the end of 2017, after the first three States had reported under the procedure; the views of the States parties involved would be a fundamental part of that evaluation. The Committee would then decide whether the list of issues prior to reporting served to further the implementation of the Covenant or whether it should revert to the regular procedure. She wished to assure States that the Committee was fully aware of the time constraints they faced when replying to questions put by experts and was seeking ways to address the issue.

14. **Ms. Zolotova** (Russian Federation) asked how often Russian was now used, in light of the decision to allocate a maximum of three languages for the work of the human rights treaty bodies, and exceptionally a fourth. Since the change, delegations from the Russian Federation had encountered serious problems, in particular in the consideration of the country's report to the Committee on the Elimination of Discrimination against Women. NGOs from the Russian Federation had been forced to speak with members of that Committee in a language that was foreign to them.

15. States parties and the members of human rights treaty bodies did not appear to have the same understanding of the provisions of resolution 68/268 regarding the meetings of the chairs of the human rights treaty bodies. The treaty bodies had been "encouraged", not "required", to continue to enhance the role of their chairs, and only in relation to procedural matters. Yet the San José Guidelines, which all treaty bodies appeared willing to adopt, covered more than procedural matters: they also imposed additional obligations on States, even though matters of substance were to be discussed in meetings with the States parties to a given instrument.

16. She therefore wished to know in what capacity the Chair had adopted the Guidelines, since the Committee had not authorized him to do so. It would also be interesting to know what procedure the Committee planned to use in considering the Guidelines for adoption. The adoption of a document that had not been considered by Committee members in draft form struck her as thoroughly undemocratic.

17. **The Chair** said that the point raised about the use of Russian was legitimate, but the treaty bodies worked on the basis of a resolution that the Russian Federation had

voted for. If the use of only three or four languages was problematic, that problem would have to be dealt with by the General Assembly, which had adopted the resolution.

18. The San José Guidelines were still being considered by the Committee, and it was still far from adopting them, as some of the language required revision.

19. **Mr. Silva Muñoz** (Uruguay) said that, in the context of the universal periodic review, Uruguay would continue recommending that States should ratify the Covenant and the Optional Protocol. In that connection, he wished to know what impact the Optional Protocol had had on the work of the Committee. His country's experience with the simplified reporting procedure had been positive.

20. The tone and substance of the debate around the San José Guidelines had greatly surprised his delegation, as it seemed to take no account of the independence of the treaty bodies and their mandate to ensure the implementation of international human rights instruments. No guidelines adopted by the chairs of the treaty bodies were legally binding, and not a word of the Covenant would be altered, so States parties would not be required to take on any new obligations. The delegation of Uruguay would welcome the adoption of the San José Guidelines, which could be an effective tool for combating reprisals against individuals or groups collaborating with the treaty bodies. In that connection, he wished to know whether the Committee had appointed a rapporteur or focal point on intimidation or reprisals, as recommended in the Guidelines.

21. **Mr. Redondo Gómez** (Spain) said that his country was satisfied with the way the simplified reporting procedure had worked in its dialogue with the Committee against Torture. It had enabled a more productive and focused discussion of problems, as well as more specific recommendations. His delegation trusted that the procedure, as it had been described by Ms. Bras Gomes, would be equally beneficial to the Committee on Economic, Social and Cultural Rights and the States parties reporting to it. He encouraged the Committee to involve civil society in the evaluation of the simplified procedure and he joined the representative of Uruguay in encouraging the Committee to adopt the San José Guidelines.

22. **Mr. Abdel-Moneim** said that, regardless of reporting procedure, reports should show how the maximum of a State party's available resources changed over time. They should also be written in such a way as to allow the Committee to determine whether a State party was making progress towards the full realization of Covenant rights.

23. **Ms. Shin**, speaking as chair of the working group on communications, said that 13 communications under the Optional Protocol had been registered since 2013 and the Committee had reached a decision on 3, finding a violation in 1 case and finding 2 others inadmissible. The working group was composed of five members, one from each of the major geographical regions, and a rapporteur was appointed for each communication. The working group studied the communications and made recommendations to the Committee, but decisions and views were adopted only by the Committee in plenary. It was possible that the Committee would come to two more decisions at the current session.

24. Information on the complaints procedure, as well as other relevant information, was available on the Committee's website. There was also a link to the jurisprudence database, which was currently being updated.

25. **Mr. Appreku** (Ghana) said that Ghana was taking steps to become a party to the Optional Protocol. The country's initial report under the Covenant was overdue, and as a result it had availed itself of the capacity-building assistance offered by the Office of

the United Nations High Commissioner for Human Rights (OHCHR). Ghana had accepted the simplified reporting procedure. The reporting delay was the result not of legal objections to the justiciability of Covenant rights but of administrative inaction.

26. **Ms. Martínez** (Ecuador) asked what mechanisms were in place to ensure that when a communication concerning a State party to the Optional Protocol was received, it was brought to the attention of the State party concerned in timely fashion. The previous day the Permanent Mission of Ecuador had received a message referring to a communication that had apparently been submitted six months earlier, yet the Mission had no record of it.

27. **Ms. Shin** said that as soon as the secretariat received a complaint, it was circulated to the members of the working group, who would decide whether the communication should be registered. Committee members would then decide whether the communication was admissible. Sometimes, if it was found inadmissible, it was not transmitted to the State party. Every effort was made to ensure that the receiving State party would have time to reply within the six-month period provided for in the Optional Protocol. She was therefore surprised to learn of the problem encountered by the Permanent Mission of Ecuador.

28. **Ms. Zolotova** (Russian Federation) asked whether the OHCHR Petitions Unit, which received the communications, had the authority to reject them before they reached the working group.

29. **Ms. Shin** said that the five members of the working group were informed, even between sessions, of any communication received by the Petitions Unit.

30. **Ms. Zolotova** (Russian Federation) said that she would appreciate hearing from a representative of the Petitions Unit whether any communications were not transmitted to the members of the working group.

31. **Ms. Edelenbos** (Secretariat) said that all communications received under the Optional Protocol to the Covenant were shared with the members of the working group.

32. **Mr. Mancisidor de la Fuente** said that the Committee had made considerable progress on two of the five general comments it was working on — namely the ones on sexual and reproductive health and on just and favourable conditions of work. Once those two general comments were adopted, possibly by the following session, work would resume on the three others, the first of which dealt with human rights, the environment and development, the second with States parties' obligations in the context of private sector activities and the third with science, technology and human rights within the framework of article 15 of the Covenant. The procedure for the preparation of general comments, which was quite arduous, provided for consultation with States parties and took account of the views of other stakeholders, as recommended in resolution 68/268.

33. **Mr. De Schutter** said that, in addition to general comments, the Committee adopted statements, which were shorter and more topical. They provided guidance to States parties on how to respond to crises that could arise at particular points in time. One such statement, in the form of a letter that had been sent to all States parties to the Covenant, had dealt with the protection of Covenant rights in the context of the recent economic and financial crisis. The Committee was considering statements on other issues, including the refugee crisis and the economic adjustment programmes demanded of debtor States by their international creditors. The statements were a way for the Committee to improve States parties' understanding of the Covenant.

34. **Mr. Bougacha** (Tunisia) asked why the Committee did not recommend that the States parties that appeared before it refrain from taking measures that prevented the

people of other States from realizing their Covenant rights. Why did the Committee not recommend that States parties act in such a way as to create an international environment favourable to the development of other countries?

35. **Mr. De Schutter** said that some of the Committee's general comments referred to States parties' extraterritorial obligations. Moreover, in its concluding observations on the reports it considered, the Committee highlighted potential problems arising from trade agreements or austerity plans. In that context, the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights were of considerable interest. A better understanding of the extraterritorial obligations of States parties was beginning to take shape.

The public part of the meeting rose at 4.35 p.m.